

PESTICIDE USE ENFORCEMENT PROGRAM PLANNING GUIDANCE AND EVALUATION

NAPA COUNTY AGRICULTURAL COMMISSIONER'S OFFICE

2006 – 2007

COUNTY PROGRAM OVERVIEW

County Resources

The Napa County Agricultural Commissioner's Office (CAC) has ten Agricultural Biologists and one Deputy Agricultural Commissioner that actively work in the pesticide use enforcement (PUE) program. Some biologists primarily work on the issuance of operator identification numbers (Op ID) and restricted material permits (RMP), while others conduct a wider variety of activities including inspections, investigations and outreach. Overall, including management, 7.6 full-time equivalent staff members work in the program.

Workload

No significant inspection workload changes are anticipated for the 2006-2007 fiscal year. This workload will be similar to that of 2005-2006. In 2005-2006, 379 inspections were conducted, 255 restricted material permits and 493 operator identification numbers were issued, 15 investigations were completed, and 1034 notices of intent were reviewed. Outreach to growers and pest control businesses will continue with a greater emphasis being placed on the needs of the Spanish speaking community. Additional outreach will focus on educating maintenance gardener businesses on the requirements to legally apply pesticides as a part of their business.

A. RESTRICTED MATERIAL PERMITTING

Permit Evaluation-Process Evaluation and Improvement Planning

Permit Evaluation

The Napa CAC takes the issuance of restricted material permits seriously. Prior to each restricted permit renewal season, the CAC holds an in-house meeting in which the RMP issuance requirements and procedures are reviewed. In addition, all biologists that will issue RMP's will attend DPR's Restricted Materials and Permitting, Pesticide Use Enforcement Program Standards Compendium Volume III training scheduled for November and December 2006. A complete copy of Compendium Volume III will be available for use by all biologists.

During the issuance process, agricultural biologists work with growers and representatives of agricultural pest control businesses (PCB) to assess the need for the use of restricted materials. Permit applicants will be asked to communicate what additional mitigation measures they considered to reduce the risks of the use of a restricted material and what alternative treatment options they considered for sites adjacent to environmentally sensitive areas or schools, residential areas, etc. The inclusion of “laundry lists” of pesticides on an RMP is discouraged. RMP’s are only issued to individuals that maintain valid certified applicator cards or licenses (Qualified Applicator License, Qualified Applicator Certificates and Private Applicator Certificates). Permit conditions for individual restricted materials are reviewed with growers, and a handout of the particular information and NOI procedures is provided. The fact that permit conditions were reviewed with the grower or business representative is noted on the permit in the “conditions” section. In Napa County, RMP’s are issued for a period of one year; no multiple year permits are issued.

In Napa County, restricted materials that are often added to RMP’s include aluminum phosphide, strychnine, paraquat, carbaryl, 2,4-D, 1-3 dichloropropene, methomyl and methyl bromide. At the end of August 2006, a supplemental label for spinosad was approved allowing for its use on any fruit, nut, vine, vegetable and food crop and ornamentals. At that time those who needed to control olive fruit fly with spinosad no longer had to operate under the Section 18 emergency exemption.

Hay and pasture growers are cautioned about the use of 2,4-D around grapes due to that crop’s extreme sensitivity. Extra attention is paid to the issuance of fumigant permits. Site visits are made before any permits are written for fumigants, and in the case of methyl bromide, a work site plan must be completed as per regulations. Accurate acreage of fumigation sites is determined with the use of GPS technology.

In the last three years, Napa County growers have been dealing with a serious new pest of grapevines, the vine mealybug (VMB). Because of the VMB’s potential to decrease the value and marketability of Napa County’s valuable winegrape crop, an eradication protocol has been initiated. That protocol proposes the use of several insecticidal control strategies, including, among other materials, Lannate (methomyl) and Lorsban, both of which are cholinesterase inhibiting materials. Lannate is a California Restricted Material and carries a “Danger” label. The CAC is providing information directly to growers dealing with VMB on their responsibilities for medical supervision and for the proper use of closed mixing systems for the mixing and transferring of such “Danger” label pesticides. General outreach on these issues as well as recent label changes on these materials regarding field posting will also be accomplished through *The Ag Rag* newsletter.

During the permit issuance season for 2007, biologists will be providing to growers and pest control businesses DPR’s new bookmark that describes their online endangered species tool known as PRESCRIBE. During the 2006 season, biologists introduced growers to PRESCRIBE and showed them how to utilize the tool for identifying any pesticide use limitations relative to endangered species that may inhabit a particular section-township-range that is being farmed. When NOIs are received for restricted material applications, biologists will run PRESCRIBE for a particular pesticide and location. The resulting information on any pesticide application limitations will be communicated to the grower.

The approval of the NOI will be based in part on the results of the query. PRESCRIBE will also be run at the time of the issuance of job permits for 1-3 dichloropropene, methyl bromide and fenamiphos, pesticides that receive extra scrutiny in Napa County.

In 2007, agricultural biologists will utilize the recently installed Ag GIS permit program for permit and operator identification number issuance and renewal. Field boundaries have been digitized for the majority of Napa County agricultural sites and are tied to recent aerial photography. The field boundaries have been incorporated into Ag GIS. The program will allow biologists to update the grower's field boundaries at the time of permit / ID issuance. The use of this permit / mapping system will help to assure that the CAC maintains an accurate map for all sites listed on RMP's and Op ID's. The growers review the maps with the biologists to assure that the correct properties are identified.

Schools, daycare centers, hospitals and eldercare facilities are identified on the maps. Biologists can bring to the attention of the growers the proximity of these sensitive locations to their sites. The aerial photography gives the biologist an opportunity to accurately assess with the grower the surrounding environment and to identify any other sensitive sites. The use of aerial photography may aid in identifying previously unknown hazards. Greater permit restrictions would be mandated, or the permit would be denied, if a newly identified hazard could not be mitigated.

Program Strengths

- An experienced, committed PUE staff that will accurately evaluate sites for compliance with CEQA requirements prior to RMP issuance.
- Use of an annual in-house PUE meeting for review and training on RMP issuance prior to permit renewal season. Use of Compendium III (Restricted material and Permitting) as a training tool and reference guide for permit issuance.
- The ability and willingness to respond to changing restricted material pesticide use trends brought on by recent VMB infestations or other changes in pest pressures.
- The use of GIS technologies to accurately assess maps for restricted materials in relation to sensitive sites, including schools and daycares.
- The use of laser rangefinders and other measuring devices to accurately assess distances to dwellings and other sensitive locations prior to fumigation permit issuance.
- The use of an electronic NOI log developed in November 2004 to make the approval/denial of restricted material applications more efficient.
- A staff that includes members with varying educational and work backgrounds, as well as biologists who bring insight and experience from their work in other counties.

Goal or Objective

The goal of the Napa County Agricultural Commissioner's Office is to accurately evaluate restricted material permit applications and issue or deny permits following the requirements outlined in DPR's Restricted Materials and Permitting, Pesticide Use Enforcement Program Standards Compendium Volume III.

Measure of Success

A method to measure the success of the permit issuance process is to have an annual evaluation of the program. This evaluation should point out deficiencies in the program and highlight areas that need further improvement. This evaluation will include an analysis of non-compliances, complaints and illnesses associated with restricted materials applications. Because of Napa County's relatively low use of restricted materials, very few illnesses or complaints have been associated with such applications over the years. In addition, soliciting ideas from staff and our Enforcement Branch Liaison (EBL) will be the key to future improvements.

Site Monitoring Plan

The Napa CAC prioritizes site monitoring for planned restricted material applications based on the potential for the chemicals to cause harm to the environment or human health.

An analysis of the NOI's received in the 2005-2006 fiscal year showed that 799 of 1,034 NOI's (77%) were for the Section 18 material spinosad. The other main pesticides for which NOI's were received in 2005-2006 include the following: aluminum phosphide-53, Vikane-53, paraquat-23, strychnine-20, and 1-3 dichloropropene-15. Thirty four pre-application inspections were completed on the 235 notices of intent submitted for non-spinosad applications. That equates to a performance of 14.4% pre-application inspections on all non-spinosad NOI's. Including the spinosad NOI's, pre-application inspections were performed on 3.2 % of all NOI's received. These inspections were conducted on NOI's submitted for herbicides, rodenticides, and 1-3, dichloroprene applications among others.

While pre-application and application inspections are performed on the use of a broad spectrum of pesticides requiring NOI's, a major emphasis is placed on monitoring fumigant applications, with the majority of those being for 1-3 dichloropropene, as methyl bromide applications have decreased significantly in the last few years. Site visits are made before any permits are written for fumigants, and in the case of methyl bromide, a work site plan must be completed. Accurate acreage of fumigation sites is determined with the use of GPS technology. All fumigation applications sites are monitored with special attention paid to jobs in the most sensitive areas. Since there are only two fumigation companies that work in Napa County, we do not document each application with an inspection. In 2005-2006, five such application inspections were completed.

Pre-application inspections are performed on all 2,4-D NOI's to assess any potential impact to grapes from such applications, since grapes are highly sensitive to 2,4-D. If applications are timed incorrectly, there is a greater potential for crop damage. If grapes are leafing out or

bud swell is imminent, 2,4-D applications are denied and appropriately documented in the NOI denial binder.

With the increased use of Lannate for VMB control, as discussed under the “Permit Evaluation” section, the CAC will focus efforts on pre-application and application inspections of this material.

Program Strengths

- Use of GPS for analysis of fumigation site acreages for buffer zone verification accuracy.
- Ability to evaluate sites for sensitive locations (schools, hospitals, etc.) using GIS technologies prior to field inspections.
- Use of anemometers to evaluate meteorological conditions at the time of pesticide applications.
- Utilization of experienced staff to train and mentor newly hired biologists.
- A staff that includes members with varying educational and work backgrounds as well as biologists who bring insight and experience from their work in other counties.

Areas Needing Improvement

- Continue to increase number of man hours devoted to pesticide monitoring inspections by involving a broader spectrum of department staff.
- Perform greater oversight on handlers of restricted materials with a history of poor compliance with laws and regulations and pesticide label requirements.

Goal or Objective

A commitment will be made to implement measures and use appropriate technology to ensure a site-monitoring plan that takes into consideration pesticide hazards, local conditions, and permittee and pest control business compliance histories. Restricted material applications at the ag/urban interface will be carefully monitored. Priority of monitoring will be given to applications of materials, such as fumigants, Lannate and paraquat, that have a greater potential to cause harm to workers or the public. Priority will also be given to applications of materials, such as 2,4-D, that have the potential to harm crops or private property if not applied appropriately. A commitment will be made to evaluate current site monitoring for strengths, weaknesses and areas for improvement. A goal has been set to conduct pre-applications on 10% of all NOI's received; well above the DPR mandated 5%.

Measure of Success

There are many ways of measuring the success of a monitoring program. An assessment will be made of how many inspections of restricted materials are done at the ag/urban interface and at such sensitive sites as schools and daycare centers. The focus will be on materials with the greatest potential for causing human health problems, or environmental or property damage. Tracking the percentage of pre-applications per NOI can also be a measure of our success in monitoring restricted material applications. A continual evaluation of the program will undoubtedly point out areas of strengths and deficiencies. Adjustments to the program can occur continually to correct any deficiencies.

B. COMPLIANCE MONITORING

Comprehensive Inspection Plan

Inspection Plan

Each year, the Napa CAC develops an inspection assignment program for staff assigned to perform PUE inspections. Numbers of inspections are assigned to each biologist based on experience in the program and the time available to work in PUE. Approximately 40% of inspections are scheduled records inspections, and 60% are some type of random field inspection. The Saturday inspection program that was initiated in the spring of 2006 will be continued during the 2007 fungicide season. Work on Saturdays as well as early mornings and evenings allow for a broader targeting strategy and will give us contact with pesticide applicators that don't typically operate during the week or in daylight hours. These inspections focus on both ag and non-ag pesticide applicators. In May and June 2006, 28 inspections were conducted during Saturdays. The results of these inspections along with the compliance and enforcement actions issued will be discussed in the Enforcement Response section of this document.

In 2006-2007, ag biologists will begin using the Airs electronic inspection program developed by Statewide Soft. Napa County has made the investment to supply all biologists who conduct PUE inspections with a tablet PC loaded with the program software and a portable printer. Biologists have received initial training in the use of the program. The program will allow biologists to produce and print a complete, legible inspection document in the field. Each inspection will be downloaded to a database on return to the office. While in the field, each biologist will have access to the database on their tablet PC and can check on the compliance history of the growers they are inspecting. Staff will be able to query the database in numerous ways to check for non-compliance trends by specific violated code sections. Over time, such queries will provide information to allow for adjustments to the PUE program with the goal of increasing grower and business compliance.

Records Inspections

Each biologist is given an alphabetical portion of the county's list of Op ID's and RMP holders in proportion to the individual inspection assignment numbers. The focus for these inspections is on operators with pesticide handler employees, restricted materials permits and

poor compliance records. These inspections are generally scheduled ahead of time. Small growers without employees are given a lower priority unless problems with compliance are known or suspected.

In 2004, a strategy was implemented for more aggressive records inspection follow ups so growers brought into compliance stay in compliance. This strategy, which has shown success during 2004-2006, will be continued in 2006-2007. A review of records inspections completed by each biologist in 2005-2006 will be completed to identify growers with documented non-compliances. These growers will receive a follow up inspection to assess their level of compliance.

Field Inspections

Biologists are given assignments to complete a certain amount of agricultural application, mix/load, and fieldworker safety inspections. These application inspections are handled in a random fashion. Biologists are encouraged to travel all of the side roads of Napa County, not just Highway 29 and the Silverado Trail, the two main north-south arteries. Fieldworker safety inspections are targeted based on knowledge of recent pesticide applications through inspections, pesticide use report reviews or visual clues of recent applications. Biologists share with each other at formal and informal in-house meetings their knowledge of growers and businesses to watch. Special attention will also be paid to small growers that may be operating with little regulatory contact from our office and who are in need of direction and assistance to establish and maintain compliance with regulatory requirements.

Targeting of maintenance gardener and structural applications at specific properties is also attempted, but usually with less success. A Maintenance Gardener seminar is scheduled for November 2006 to educate landscape maintenance operators about the requirements to apply pesticides as a part of their business. General safety topics will also be discussed. Repeat offenses by unlicensed operators in the last two years lead to the development of the course to provide information and assistance to the landscape industry with the goal of increasing compliance with the law and to reduce worker safety violations.

Continually educating pesticide users of their responsibilities in worker safety is a strategy to aid in the reduction of non-compliance rates and can be done through various outreach mechanisms. In the spring of 2006, Napa CAC once again partnered with the Napa County Farm Bureau to put on agricultural field day training. This training was substantially revised from previous years but still included modules on proper pesticide application techniques and worker safety, first aid and health effects, protection of the environment, and pest identification. Education can also be disseminated through the department website, *The Ag Rag* newsletter, and at our yearly continuing education classes conducted in both English and Spanish.

Program Strengths

- An experienced, committed PUE staff that is eager to accurately assess compliance in the field and at records inspections.
- A staff that includes members with varying educational and work backgrounds as well as biologists who bring insight and experience from their work in other counties.
- Use of frequent in-house PUE meetings for sharing of information.
- An effective inspection strategy for records inspections targeting growers with employees and restricted materials.
- The use of GIS technologies to accurately assess maps for restricted materials in relation to sensitive sites.
- The use of GPS technologies to determine accurate acreages for fumigation monitoring activities.
- The use of an electronic NOI log to make inspections of restricted material applications more efficient.
- An organized method of logging inspections in a monthly Excel spreadsheet and making the spreadsheet and copies available in a binder for biologist review. Copies of inspections are also placed in grower and pest control business files.
- Making staff available to the EBL for oversight inspections and training.
- The use of continuing education meetings to inform growers of common non-compliance trends.
- Dissemination of important information through The Ag Rag newsletter and the department website.
- Participation and support of the Napa County Farm Bureau's agricultural field day training

Areas Needing Improvement

- Conduct follow-up monitoring inspections with growers and businesses to determine if non-compliances are part of a trend or an aberration.
- Conduct follow-ups in a more timely fashion. Review with biologists the importance of follow-ups and provide more supervisory overview to make sure that they are completed.

Goal or Objective

A commitment will be made to continually implement a comprehensive compliance inspection plan to ensure pesticide uses are adequately monitored throughout the county. The goal will be accomplished by continual biologist training and refresher training in effective inspection strategies, information sharing within the department, and the use of all available technologies including GIS and GPS equipment. Implementing a system of appropriate, timely follow-ups would also lead to the accomplishment of this goal.

Work Plan

The following table illustrates the work plan goal we developed for 2006-2007. The internal numbers are developed as an incentive for biologists to do their inspection work. We have generally experienced greater than a 90% completion of our overall inspection program goals. The goal numbers are subject to adjustment to meet the needs of any changing conditions with pest outbreaks or new pesticide monitoring needs identified by CAC or DPR.

2006-2007 Inspection Work Plan

INSPECTION TYPE		GOAL
APPLICATION		105
AGRICULTURAL		90
<i>use A</i>	GROWER	50
<i>use A</i>	PCO	40
STRUCTURAL		15
<i>str A</i>	BRANCH 2	12
<i>str A</i>	BRANCH 3	3
FIELD WORKER (<i>preap B</i>)		45
MIX/LOAD		25
<i>use B</i>	GROWER	12
<i>use B</i>	PCO	11
<i>use B</i>	BRANCH 2	1
<i>use B</i>	BRANCH 3	1
FUMIGATIONS		19
	FIELD	7
	COMMODITY	1
	STRUCTURAL (Branch 1)	11
RECORDS INSPECTIONS		127
<i>rec A</i>	GROWER	71
	OTHER (Gov, Golf, Misc)	8
<i>rec B</i>	DEALER	3
<i>rec D</i>	ADVISOR	3
<i>rec A</i>	AG PCB HQ	15
	AG PCB	
<i>rec C</i>	BUSINESS	15
<i>rec B</i>	STR HQ	6
<i>rec D</i>	STR BUSINESS	6
TOTALS WITHOUT PREAPS		321
PRE-AP/NOI (<i>preap A</i>)		5%
TOTALS		
NOIs		
PRE-AP		

The PUE Deputy and Biologist IV consult with biologists on their inspection activities. Direction is provided for records inspection and monitoring inspection targeting strategies at scheduled in-house PUE meetings. More individual training on inspection strategies for less experienced staff will be handled by the Deputy and Biologist IV. The Deputy and Biologist IV accompany newer staff on unfamiliar or difficult inspections. Inspection activities will be targeted to growers/businesses with employees or with a history of non-compliances. The Deputy reviews all inspections prior to their logging for PRAMR purposes and discusses with the inspecting biologist any follow-up needs and any potential compliance or enforcement actions necessary.

Measure of Success

The ultimate measure of success would be a decrease over time in the non-compliance rates documented during inspections, as well as a decrease in pesticide episodes and complaints. Statistics themselves do not tell the whole story, however. A continual evaluation of the site monitoring plan by management and staff, with input and direction from the EBL, will lead to the best program possible. Another measure of success would be having a plan in place that is flexible enough to change in response to unexpected pesticide trends or pest outbreaks.

Investigative Response and Reporting Improvement

Investigative Response and Reporting

Initiation

Napa CAC has instituted a very detailed investigative reporting structure for handling common pesticide complaints, illness investigations and priority episodes. Napa CAC strives to initiate all investigations in the timeliest manner possible. The county rarely performs priority investigations, but when informed of an episode that could turn into a priority, we initiate the first steps of the investigation immediately in accordance with the US EPA/DPR/CACASA Cooperative Agreement and follow the time frames set forth.

Biologists prepare a plan before initiating any investigation. A list of questions is developed for involved parties, supervisors and any witnesses. If the case involves pesticide drift or some other pesticide contamination, a plan for sampling is developed following the procedures outlined in the DPR's Investigative Sampling Manual. Biologists can utilize one of the county's two sampling kits; they check to make sure all necessary sampling supplies are available prior to going to the field. Prior to commencing any sampling, the EBL is consulted on the issues of the case. Samples are only taken during investigations when there is the potential for an enforcement action, and the sampling process is not initiated until the EBL gives the authorization.

Documentation

All pesticide complaints are investigated and documented. For basic complaints about odors, or neighbor disputes in which no violations are discovered, a simple electronic complaint form is used. The form provides space for complainant information, nature of the complaint and the documentation of the CAC field response. The complaints associated with growers or businesses are kept in the appropriate files. Miscellaneous complaints that cannot be attributed to any grower or organization are kept in a “miscellaneous complaints” file. All complaints are logged in the Excel spreadsheet where inspections and compliance actions are tracked.

Napa CAC follows the procedures and guidelines laid out in the Pesticide Episode Investigation Procedures Manual (PEIPM) when conducting investigations relating to pesticide illnesses and environmental or property damage incidents.

Routine antimicrobial illness investigations are conducted with the affected party and the employer, and all of the information required by the PEIPM is obtained and documented on the Antimicrobial Exposure Episode Report form. DPR Antimicrobial Information Leaflets are sent to employers to inform them of their regulatory requirements.

For illness investigations other than those involving antimicrobials, a more thorough investigation is conducted. Affected parties are interviewed, usually separately from their employer or supervisor. The county’s two bilingual staff members assist with or conduct the interviews when the exposed party is a Spanish speaking individual. When necessary, the assistance of the County Health Officer is solicited while conducting illness investigations. In many cases, a full records inspection is conducted with the grower or pest control business. An attempt is made to determine how the potential pesticide exposure occurred. Worker training, personal protective equipment usage, and pesticide label issues are all addressed to determine if a violation of the pesticide label or applicable laws or regulations occurred. The same general procedure is followed for pesticide episodes involving contamination or damage to the environment or public/private property.

Once all of the information is collected, the investigative report is written. Napa CAC uses a detailed, formal investigative report format. The format includes a summary of the incident and provides lists of the investigators, the violations discovered, and attachments. Witness statements are integrated with a chronological presentation of the investigator’s observations with reference to all of the attachments. Following the observation section is a compliance history and the findings of the investigation. The report will be the foundation for any compliance or enforcement actions to follow.

Program Strengths

- Response and documentation of all general pesticide complaints.
- Timely initiation of investigations.
- Development of investigation plans.
- Coordination and communication with the County Health Officer during illness investigations
- Completion of thorough investigative reports.

Areas Needing Improvement

- Try to balance the need for quality of reports with the timeliness issue.
- Better utilize “elements of the violation analysis” techniques during the investigation process.
- Need to do a better job of keeping the EBL informed of the progress of investigations.
- Need more training in case preparation.

Goal or Objective

A commitment will be made to implement an investigation response plan to ensure that all investigations are completed in a timely manner with accurate and supportive information.

Measure of Success

The best way to measure success is in the timely submittal of investigations to DPR. We have streamlined our investigative report format for the more basic investigations which should help biologists complete their write-ups easier and quicker. Another way to measure success is to evaluate the number of investigations returned for lack of completeness. During 2004-2006, no investigations were returned by the Worker Health and Safety branch.

C. ENFORCEMENT RESPONSE

Enforcement Response Evaluation

The Napa CAC assesses the results of all inspections and investigations for the appropriate enforcement response. The investigating biologist first researches the compliance history of the grower, business or agency. Compliance histories can be checked by reviewing the Excel spreadsheet log maintained for all inspections. Copies of inspections are kept by fiscal year in a binder with the spreadsheet and also in a compliance sleeve in the grower/business file. The biologist would then refer to the Enforcement Response Policy (ERP) to see where the violation would fit in the enforcement response hierarchy. Following discussion with the Biologist IV, the inspecting biologist would make a recommendation to the Deputy as to what type of response would be appropriate according to the ERP. In most cases, the Assistant Agricultural Commissioner is consulted as well.

The ERP classifies non-compliances as Hazard or Effect Violations (HEV) or Unclassified Violations (UV). For fine purposes, HEV's are further broken down into Class A (serious; \$700-\$5,000) Fines and Class B (moderate; \$250-\$1,000) Fines. Class A fines are employed for violations that create an actual health or environmental hazard. For Class A violations, the CAC will consider formal referral to the District or City Attorney or Circuit prosecutor. Class B fines are for violations that pose a reasonable possibility of creating a health or environmental effect. For Class B violations, the CAC will consider initiating

communication with the District or City Attorney or Circuit prosecutor. UV's carry Class C (minor; \$50-\$400) Fines and are reserved for violations that do not threaten health, property or the environment. The ultimate fine level within the class is determined by assessing the respondent's compliance history, the amount of cooperation during the investigation and the level of harm or damage done to persons, the environment or property.

If the inspected party has had a clean compliance history for the past two years, and the non-compliances noted during an inspection are UV's that are corrected on site, the biologist will contact the permittee concerning the infraction. In cases where the violation did not threaten health, property or the environment, the non-compliance checked on the inspection form could serve as the method of documenting the issue or a Warning Letter or Violation Notice could be issued. For subsequent UV incidents, Enforcement Actions, including the levying of fines, may be proposed.

For first incident infractions of an HEV-B, a Compliance Action would be issued or an Enforcement Action proposed. Compliance actions would include Warning Letters, Violation Notices or Documented Compliance Interviews. All Warning Letters and Violation Notices are reviewed by Deputy and given final review by the Assistant Agricultural Commissioner prior to mailing. A Documented Compliance Interview is an informal meeting between someone with compliance issues and members of the CAC staff, with the purpose of coming to an understanding of what is required to be in compliance. A document outlining what was discussed at the meeting is produced and signed by all in attendance. If a compliance action is issued, a Decision Report would need to be completed and submitted to DPR to justify why a fine was not proposed. All subsequent HEV-B violations, an Enforcement Action would be proposed.

Following the ERP implementation, Napa CAC modified DPR's Decision Report template to make the document more useful and understandable. The modified version has been adopted by DPR for statewide distribution.

For all HEV-A violations, an enforcement action is required. Some serious violations may warrant referral to the County District Attorney or DPR for prosecution. When a serious violation is identified as a result of an inspection or a pesticide episode investigation, or if repeat violations occur, the above mentioned compliance actions may not serve as the appropriate response to ensure compliance. At this point an enforcement action would be warranted. Examples of commonly used enforcement actions are: Agricultural Civil Penalties (ACP); Structural Civil Penalties (SCP); revocation or suspension of county registration; and refusal, revocation or suspension of a restricted materials permit. An ACP includes the proposal of a fine. Violations identified on an inspection would trigger a thorough investigation as discussed earlier in the Investigative Response and Reporting Improvement section. Evidence that supports each element of a violation would be documented in the report. The findings in the written investigative report serve as the foundation for a civil penalty action. Since an ACP includes the proposal of a fine, respondents must be afforded their due process rights. Along with the Notice of Proposed Action (NOPA), a copy of the investigative report is sent to the respondent. They may pay the proposed fine or request a hearing and present evidence on their own behalf with the intent to disprove alleged violations.

During the 2004-2005 and 2005-2006 fiscal years, Napa CAC issued 9 fines and referred one case to the County District Attorney for prosecution. The case referred to the DA was for a pest control business's improper emergency medical response for an employee exposed to a pesticide that lead to an injury. This violation was discovered through the course of an illness investigation. The total amount of fines imposed for those two fiscal years was \$9,300.00. Of those nine NOPA's, there were only two hearings requested.

In May and June 2006, 28 inspections were conducted during Saturdays. Of the 28 inspections, there were 17 in which no non-compliances were discovered. For the other 11 inspections, 27 non-compliances were discovered which lead to the issuance of six Letters of Warning and two Notice of Proposed Actions. The two NOPA's that were to be completed in 2006-2007 were issued to two agricultural pest control businesses with recent histories of worker safety non-compliances.

Not including the Saturday inspections, six inspections or investigations conducted in the last three months of fiscal year 2005-2006 lead to the development of six additional NOPA's to be completed in fiscal year 2006-2007. The types of violations discovered that lead to NOPA's being issued included: incomplete or lacking decontamination facilities, lack of personal protective equipment, unlicensed pest control activity, failure to use closed mixing system, and repeated failure to report pesticide use.

Program Strengths

- Development of a thorough investigative report to serve as the foundation for the ACP.
- Strict use of the Enforcement Response Policy for consistent enforcement decisions.
- Placement of fines at appropriate levels, based on the circumstances of the case.
- Good communication among biologists, Deputy and Assistant Commissioners during case preparation.
- Use of post-hearing, debrief sessions to evaluate the strengths and areas of needed improvement in case development and hearing performance.

Areas Needing Improvement

- Need for more training in case preparation, witness preparation and advocate/hearing officer skills.
- Utilize the DPR Enforcement Branch more effectively when developing cases.
- Utilize County Counsel more effectively when working on difficult or high profile cases.
- Utilize elements of the violation worksheet.

Goal or Objective

A commitment will be made to continue to assess each violation found during inspections and investigations, and take actions in accordance with the Enforcement Response Policy or Enforcement Response regulations.

Measure of Success

The ultimate measure of success of the enforcement program is the reduction over time of serious non-compliances that justify the issuance of compliance and enforcement actions. Another measure of success of the program would be the placement of fines at appropriate levels based on the circumstances of each case in accordance with the Enforcement Response Policy or regulations.